No. 92-1092

in the Supreme Court of the United States

OCTOBER TERM, 1992

DIVERSIFIED INVESTMENT PROPERTIES, INC. AND SABER DEVELOPMENT CORPORATION,

Petitioners,

v.

HOMART DEVELOPMENT COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

This case presents a question of whether state law has been applied correctly by a federal court sitting in diversity jurisdiction. Accordingly, it does not present any federal question that justifies exercise of this Court's jurisdiction to review by writ of certiorari.

ARGUMENT

Petitioners ask this Court to exercise its discretion to review a summary judgment grounded on state law claims that they had asserted against Respondent. Two federal courts have already determined that the state law claims are meritless. Dissatisfied with those holdings, Petitioners now seek further review.

Petitioners brought this action in Florida state court, asserting brokerage and partnership relationships with Respondent. Respondent, an out-of-state corporation, removed to the United States District Court for the Southern District of Florida. On Respondent's motion for summary judgment, the District Court found no genuine issue of material fact as to whether, under Florida law,

(1) the broker's contract of employment had terminated;

(2) a partnership had been formed; and

(3) the claimed partnership had terminated.

Accordingly, the District Court entered summary judgment against Petitioners. (Petition, Appendix ("App.") B). The Court of Appeals for the Eleventh Circuit affirmed without opinion.[1] (App. A).

The Petition, which seeks review of the summary judgment, does not raise an issue worthy of this Court's attention. *Cf.* U.S. Supreme Court Rule 10. Instead, Petitioners simply ask this Court to second-guess the District Court and Court of Appeals in

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[1]Petitioners contend, without support, that the Court of Appeals failed to make an independent review of the record. (Petition, pp. 9, 35). This contention is unfounded. In affirming the District Court's findings, the Court of Appeals cited its Local Rule 36-1, which provides for affirmance without opinion when the court determines that summary judgment is supported by the record and that an opinion would have no precedential value. (App. A-1).

their interpretation and application of settled Florida law in a routine commercial dispute. For obvious reasons,

> this Court must necessarily depend upon the district courts and courts of appeals for initial determinations of questions of state law; indeed, [the Court's] practice of deference to such determinations should generally render unnecessary review of their decisions in this respect.

Cort v. Ash, 422 U.S. 66, 72 n.6 (1974); *see Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) ("standing alone, a challenge to state-law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review").

As the District Court's opinion reveals (App. B), Petitioners' garden-variety state law claims were properly dismissed under Florida law, and do not warrant further consideration.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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